The City of Whitehorse

PRESS RELEASE

Contact: Robert Fendrick, CGA
Director, Administrative Services
http://www.whitehorse.ca
Ph: 867-668-8612
Fax: 867-668-8635

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PETITION QUESTIONS FOR A MCLEAN LAKE PARK FOUND INVALID

On February 26, 2008 the City of Whitehorse received a Notice of Petition for a Referendum for a McLean Lake Park; the notice included Referendum Questions [attached] being asked by the Petitioners. Per Section 152(1) of the *Municipal Act* (Act), the City had its solicitors undertake a review of the Notice of Petition, Referendum Questions and the proposed bylaws being sought by any potential Referendum to determine whether the matter is within the jurisdiction of the City.

Section 152(1) of the *Municipal Act* specifically provides that a bylaw, being sought by a Referendum, shall only be valid to the extent that it falls entirely within the jurisdiction of the municipality. It is therefore necessary, at the outset, to ensure that a bylaw, or amendment thereof, being sought by Petitioners, is entirely within the jurisdiction of the City. Failure to do so could result in the creation of a bylaw which is outside of the City's jurisdiction and therefore invalid, not to mention the undertaking of a lengthy and costly referendum process.

The questions received were as follows:

> *Should the City of Whitehorse amend Official Community Plan Bylaw 2002-01 by amending Section 5.3 Park Reserve with the addition of the following third paragraph: "The land within a boundary of 500 metres from the High Water Mark of McLean Lake shall be added as McLean Lake Park to ensure that the McLean Lake*

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area is preserved as a nature park for protection of its natural environment, and recreational activities."

and

by adding a fourth policy to section 5.3: "The City of Whitehorse shall amend the Zoning Bylaw to create a 'McLean Lake Park Zone' with appropriate regulation to restrict the use of the land within a boundary of 500 metres from the High Water Mark of McLean Lake to recreational purposes and no other, and to protect its natural environment, and further the City shall pursue the transfer of the ownership of the subject lands from the Yukon Government to the City."?

Concerns

The proposed Official Community Plan (OCP) amendment, framed by Question #1, contemplates the creation of a McLean Lake Park on lands included within the boundary of 500 metres from the High Water Mark of McLean Lake.

In the City of Whitehorse's opinion, Question #1 contemplates the amendment of the OCP without Council satisfying its legislative responsibilities by properly deliberating and considering the merits of the proposed amendment.

1. The City of Whitehorse notes that there are various interests in the lands including private leasehold interests, and freehold interests by private individuals and the Government of Yukon. Because the proposed amendment will affect privately-held lands, due consideration must include:

    - Whether the infringing of these landowners rights are necessary for the overall greater public interest
    - Whether any of the Council's actions are necessary or desirable for all or part of its community

2. In addition, the intent of the proposed amendment to the OCP is such that an amendment would proceed without a public hearing and without the input of concerned citizens at such a public hearing. Ministerial involvement would also be overlooked. The intent of the Act is to give Council the opportunity to review the proposed amendment and obtain public input prior to amending the OCP and for the Minister to confirm that the City has followed all the necessary steps. The effect of the proposed OCP amendment, however, circumvents this process and specifically undermines and thwarts the legislative responsibilities of Council.

There are two aspects to the second part of the proposed questions. With respect to what could be considered Question #2(a), it is the City of Whitehorse's opinion that the specific direction from the OCP to the Zoning Bylaw contemplated by Question #2 is outside of the jurisdiction of a municipality. Although it is clear that s. 288 of the Act contemplates that a Zoning Bylaw must be amended to be consistent with an OCP amendment, the Act does not provide specific direction to Council as to the type of zoning that the land is to receive. This decision is left to Council's discretion:

- The Zoning Bylaw may have alternative existing zones that satisfy this legislative requirement, or
- Council may decide to create a zone which satisfies this legislative requirement but differs from what is proposed in the referendum question

In addition, this proposed amendment attempts to interfere with the legislative requirements and process prescribed by the Act. Specifically, any zoning amendment must take place within the context of the legislation which includes:

- Consideration by Council of the merits of such proposed amendments and its impact on the affected and adjoining landowners
- The publication of a notice of intent, and

- The holding of a public hearing

As provided in s. 296 of the Act a public hearing is required to consider all submissions on the proposed bylaw or amendment. It is clear that the legislature intended that Council, as part of its deliberation, consider the input of its citizens prior to moving forward with a zoning amendment.

With respect to Question #2(b) and the City pursuing the transfer of the ownership of the subject lands from the Government of Yukon to the City – prior to acquiring any real property, by sale or otherwise, Council must consider such acquisition within the context of the Act as a whole and within proper legislative principles. Issues must be considered such as:

- Whether the acquisition is necessary or desirable for all or part of its community
- Whether the lands have existing environmental or contamination issues which would expose the City to liability, and
- Whether there are other considerations and responsibilities under other Acts

City of Whitehorse Positions

It is the City of Whitehorse's opinion that legislated due consideration would be forfeited by the proposed amendment to the OCP and, as such, Council would be acting outside its jurisdiction; therefore, resulting in the creation of a bylaw which is invalid. In addition, the proposed bylaw amendment Question #2 would thwart Council's legislative responsibilities and overlook the legislative process to which Council is required to adhere. Finally, by attempting to force the City of Whitehorse to proceed with a land acquisition for a McLean Lake Park without due consideration and deliberation, Council would be prevented from satisfying its legislative responsibilities thus rendering any action by the City to acquire such lands invalid.